

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75-7005

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B

NEIL F. CROWLEY and LOUIS F. AMATUCCI,
Plaintiffs-Appellants,

against

AMERICAN AIRLINES and ALLIED PILOTS ASSOCIATION,
Defendants-Appellees.

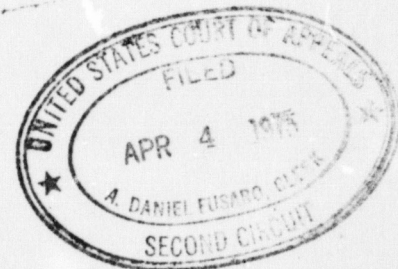
DEFENDANTS-APPELLEES' SUPPLEMENTAL APPENDIX

DEBEVOISE, PLIMPTON, LYONS & GATES
299 Park Avenue
New York, New York 10017
Attorneys for Defendant-Appellee,
American Airlines, Inc.

McMAHON & CROTTY,
1028 Liberty Bank Building
Buffalo, New York 14202

and

SURREY, KARASIK, MORSE & SEHAM
500 Fifth Avenue
New York, New York 10036
Attorneys for Defendant-Appellee
Allied Pilots Association



PAGINATION AS IN ORIGINAL COPY

INDEX TO SUPPLEMENTAL APPENDIX

	<u>Page</u>
Selected Pages from Deposition of Louis F. Amatucci.	1sa
Selected Pages from Deposition of Neil F. Crowley.	10sa
Excerpt from Oral Argument on Motion for Summary Judgment	23sa
Copy of Opinion in <u>Neal v. American Airlines, Inc., et al.</u>	24sa
Allied Pilots Association's Affidavit of Nicholas J. O'Connell in Support of Motion for Protective Order, Sworn to August 29, 1974.	33sa
Exhibit "A", Annexed to Affidavit of Nicholas J. O'Connell.	39sa
Exhibit "B", Annexed to Affidavit of Nicholas J. O'Connell.	41sa
Exhibit "C", Annexed to Affidavit of Nicholas J. O'Connell.	42sa
Exhibit "C-1", Annexed to Affidavit of Nicholas J. O'Connell.	45sa
Exhibit "C-2", Annexed to Affidavit of Nicholas J. O'Connell.	48sa
Exhibit "D", Annexed to Affidavit of Nicholas J. O'Connell.	52sa
Exhibit "E", Annexed to Affidavit of Nicholas J. O'Connell.	56sa
Exhibit "F", Annexed to Affidavit of Nicholas J. O'Connell.	58sa
Exhibit "G", Annexed to Affidavit of Nicholas J. O'Connell.	62sa

1
2 this letter which I am now going to show to you, dated
3 September 17, 1971, addressed to your attorney, Mr. Levy,
4 from Mr. Fisher, with a copy to you?

5 Did you get that letter (handing document
6 to witness)?

7 A Yes, I received this.

8 MR. SEHAM: I would like to have that marked
9 as APA Exhibit 6 for identification.

10 (Two-page copy of letter, on letterhead of
11 Allied Pilots Association, dated September 17, 1971,
12 from Charles W. Fisher to Mr. Herbert A. Levy, was
13 marked APA Exhibit No. 6 for identification, as of
14 this date.)

15 BY MR. SEHAM:

16 Q I am going to show you another letter dated
17 September 20, 1971, from Mr. Levy to Mr. Fisher, with a
18 copy to you, Mr. Amatucci, and I think it is a fair
19 description to say that it is a reply to the September
20 17th letter (handing document to witness).

21 A Mr. Levy did write a lot of letters; yes.

22 Q And you recognize this letter as being a copy
23 of one that you received?

24 A Right.

25 MR. SEHAM: Will you please mark that letter.

1
2 Q What about Biuso, was that also the following
3 day, on the telephone?

4 A The following day -- within a couple of days.

5 Q Did you make any written record of this
6 hearing subsequent to the hearing, for the purpose of
7 communicating with Crowley or Biuso or anybody else?

8 A Negative, negative.

9 Q Did you produce any writing of any kind dis-
10 cussing or relating to this hearing?

11 A No.

12 Q Now I am going to show you a letter dated
13 September 27th, to Charles A. Pasciuto from Nicholas J.
14 O'Connell, Jr., showing copies to Messrs. Levy and
15 Amatucci, among others (handing document to witness).

16 I ask you whether you received a copy of
17 that letter.

18 A Yes.

19 MR. SEHAM: I would like that marked as
20 APA Exhibit 8 for identification.

21 (Copy of letter dated September 27, 1971,
22 on letterhead of Allied Pilots Association, from
23 Nicholas J. O'Connell, Jr., to Mr. C. A. Pasciuto,
24 was marked APA Exhibit No. 8 for identification,
25 as of this date.)

Amatucci

119

1
2 questions are like that.

3 MR. KENNY: Please don't do that. Don't
4 argue with Mr. Seham, please. Answer his question,
5 if you can.

6 THE WITNESS: If anything happened in
7 January of 1972?

8 MR. KENNY: If you know.

9 THE WITNESS: Do I know of anything that
10 happened in that particular month?

11 MR. KENNY: Yes, which led you to conclude
12 that you couldn't get a fair hearing.

13 Is that the question?

14 MR. SEHAM: Yes.

15 MR. KENNY: If you can recall.

16 THE WITNESS: Anything that would substan-
17 tiate my feelings that I could not get a fair
18 hearing?

19 BY MR. SEHAM:

20 Q Yes; that's another way of putting it, yes.

21 A I don't recollect anything in that particular
22 month.

23 Q Fine.

24 Do you remember anything coming to your
25 attention or your learning anything in October, November,

1
2 or December -- in other words, the last three months
3 of 1971 -- which would have led you to believe, or
4 which did lead you to believe that you could not get a
5 fair hearing before the System Board?

6 A What months?

7 MR. KENNY: October, November, December.

8 Q The last quarter of that year.

9 A October, November, December.

10 I can't recollect anything happening in
11 those three months.

12 Q I am going to show you another letter that
13 came from Harry Platt, dated January 31, 1972, addressed
14 to you and Mr. Crowley, and I ask you if you recall
15 receiving this letter (handing document to witness).

16 THE WITNESS: Can I talk to counsel?

17 MR. KENNY: No; you don't have to talk to
18 me.

19 Do you remember seeing that?

20 THE WITNESS: Yes, I do.

21 MR. SEHAM: O.K., I would like that marked
22 as APA Exhibit 19.

23 (Copy of letter dated January 31, 1972, from Harry
24 H. Platt to Mr. Neil F. Crowley and Louis F. Amatucci,
25 was marked APA Exhibit No. 19 for identification, as

Amatucci

137

American Airlines, Inc., and Allied Pilots Association," was marked APA Exhibit No. 25-A for identification, as of this date.)

BY MR. SEHAM:

Q You will notice, at the bottom of the order of the System Board of Adjustment, that there are the names of the various members of that board. I would like to ask you pretty much the same questions with respect to each one.

Do you know or have you ever met J. S. Pond?

A No.

Q I therefore take it you have never discussed this case before or after the determination of the System Board with Captain Pond?

A No.

Q Have you ever met or do you know personally Captain F. C. Fosdick?

A No.

Q And it would also be true that you never discussed this case with Mr. Fosdick?

MR. KENNY: Objection to form.

Q Have you ever discussed this case with Mr. Fosdick?

A No.

1

2

Q Turning to the co-members of the board,

3

A. B. Crimmins, have you ever met or do you know Mr.

4

A. B. Crimmins?

5

A No.

6

Q Do you know what position he holds with the

7

company?

8

A No.

9

Q Captain George A. Wells-- I believe he is a

10

captain in any event, George A. Wells; have you ever met

11

or do you know George A. Wells?

12

A No.

13

Q Do you know what position he holds?

14

A I also believe he is a captain.

15

Q Do you know if he holds any position, a

16

managerial position?

17

A I think he is -- I believe he was appointed to a --

18

some sort of a position about a year ago, a year and a

19

half ago.

20

Q In the company?

21

A Yes.

22

Q But you don't know what?

23

A I don't know what.

24

Q Incidentally, do you know whether either

25

Captain Pond or Captain Fosdick hold any position in the

1
2 Allied Pilots Association aside from members of the
3 System Board of Adjustment?

4 A No, I don't.

5 Q That question includes a question as to
6 whether you know whether they hold any positions as
7 domicile representatives for Allied Pilots Association.

8 A No, I don't. I don't know.

9 Q Had you been advised by anyone as to what
10 the individual position of either Captain Pond or Captain
11 Fosdick was with respect to your grievance prior to its
12 being heard?

13 A No.

14 Q With respect to the neutral referee, Harry
15 H. Platt, did you know personally or ever meet Mr. Platt?

16 A No, I didn't.

17 Q Did you know of Mr. Platt prior to his appoint-
18 ment as neutral arbitrator on this panel?

19 A Did I -- I read his name.

20 Q In what connection did you read his name?

21 A The APA Year Book.

22 Q In what connection with the APA Year Book?

23 A Well, it states cases in which he has refereed
24 and his voting record.

25 Q And were the names of other arbitrators or

1
2 neutrals in that Year Book?

3 A I couldn't answer that question for sure. I know
4 Mr. Platt is in that book.

5 Q Do you know what Year Book it was that you
6 saw his name in?

7 A '72 or '71.

8 Q You don't happen to have a copy of either
9 the '71 or '72 Year Book with you, do you?

10 A Not with me, no.

11 Q Do you know a former TCA pilot by the name
12 of Wells?

13 A Wells?

14 Q Yes.

15 A Yes. Captain Wells?

16 Q Captain Wells.

17 A Yes.

18 Q Have you at any time discussed your case with
19 Captain Wells?

20 A The last time I saw Captain Wells was probably the
21 last time I flew with him, which would probably be in
22 November of 1970. I am not friendly with Captain Wells
23 by all means.

24 Q When you say you are "not friendly" -- you
25 are not hostile towards him?

1

2

Q What did you tell him?

3

A I objected to Mr. Platt, the five-man board setup.

4

Q Did you tell him what would be acceptable to you?

5

6

A No, I didn't tell him what would be acceptable to me, but it had to be a different board makeup.

7

8

Q So, your objection was not to Fosdick or Pond but to Platt?

9

10

A Platt and -- but APA also; I was objecting to APA, but APA was not a factor because I didn't -- in other words, I objected to APA, but I could live with their two -- in other words, they would have to vote for me, they would have to come out and vote for me for window-dressing, if you can understand the numbers.

11

12

13

14

15

16

Q So, you were not concerned about the fair representation by Fosdick or Pond, but it was Mr. Platt; is that right?

17

18

19

MR. KENNY: Objection to the form of the question.

20

21

What made him concerned about Fosdick on the board, if anything?

22

23

Q Were you concerned about Fosdick?

24

I believe you testified that you were not concerned about Fosdick and Pond.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

shows cc to you on the second page.

Do you recall receiving that letter in the ordinary course of the mail?

A Yes, I do.

MR. SEHAM: Off the record.

(Discussion off the record.)

BY MR. SEHAM:

Q I have just handed you another document which has previously been identified as APA Exhibit 7 for identification, which is a letter from Mr. Levy to Mr. Fisher, dated September 20, 1971, and showing a copy to you.

Do you remember getting a copy of that in the ordinary course of the mail?

A Yes, I do.

Q At the hearing of September 24, 1971, can you recall where and, if possible, at what hour that hearing was held?

I think it was 11 o'clock.

Q And where, geographically, was it held -- and if possible, the office?

A Kennedy Airport, the terminal building.

Q Were these American Airlines premises?

A Yes, they were.

2 cluding Mr. Levy and yourself --

3 A Yes.

4 Q -- and this has previously been identified
5 in this proceeding as APA Exhibit 8, and I will ask you
6 if you recollect having received a copy of that letter
7 in the ordinary course of the mail (handing).

8 A I would say, yes, Mr. Seham.

9 Q Maybe, so we can get an idea of the dates,
10 you say there was another counsel change after Mr.
11 Zelman was retained by you?

12 A Yes.

13 Q When did that change take place, approxi-
14 mately?

15 A A couple of weeks after we engaged him.

16 Q Can you focus on that any better?

17 A It was towards the end of October, sir. There
18 was so much stuff happening here and there was so much
19 paper work, and I was hit on the head, and I wasn't
20 working on all eight cylinders.

21 Q Do you feel comfortable that it was towards
22 the end of October in answering the question?

23 A Yes, I do.

24 Q I am going to show you a letter dated Oc-
25 tober 4, 1971 from Mr. Reetz, addressed to you, with a

1
2 Q I am going to show you another document
3 from Harry Platt, which has been previously marked as
4 APA Exhibit 24 for identification, addressed to you and
5 a number of the other people -- and I ask you whether
6 you received that in the ordinary course of the mail
7 sometime after March 14, 1972 (handing).

8 A I would say, yes.

9 Q Did you take any further action?

10 A No.

11 Q Again, aside from the court action?

12 A No.

13 Q I think the final document that we have are
14 copies of the order of the System Board of Adjustment
15 and a covering letter from Mr. Platt, the covering
16 letter being addressed to you and Mr. Amatucci, which
17 letter and attachment have been previously marked as
18 APA 25 and 25-A -- and I am going to ask you whether
19 you have seen them before and whether you received them
20 in the ordinary course of the mail after March 27, 1972
21 (handing)?

22 A Yes.

23 Q You will note that the order of the System
24 Board is signed by a number of people. The association
25 members include J. S. Pond. Do you know J. S. Pond?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No, sir, not personally.

Q Do you know of him by representation or otherwise?

A No.

Q Did you know of Captain Pond's attitude or position with respect to your grievance --

MR. KENNY: Objection as being leading.

Q Do you know whether Captain Pond had any position with respect to your grievance prior to the decision of the System Board?

A He would have had to.

Q I am just saying, do you know whether he had?

MR. KENNY: Don't guess.

A He is on the seniority list.

MR. KENNY: So you are surmising. Do you know?

THE WITNESS: No, no; I'm sorry.

BY MR. SEHAM:

Q And, similarly, did you know or do you now know, personally, Captain Fosdick?

A No.

Q Have you ever met Captain Fosdick?

A No.

Q Do you know whether he had any position with

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

respect to your grievance prior to the decision of the
System Board?

A No.

Q Mr. Crimmins, who is listed as a company
member, do you know what position Mr. Crimmins holds
with the company?

A No.

Q Have you ever met him?

A No.

Q Do you know whether he had any position with
respect to your grievance prior to the decision of the
System Board?

A No.

Q Similarly, with Mr. George A. Wells; do you
know what position he has or had with the company?

A No.

Q Do you know whether he had any position
with respect to your grievance?

A No.

Q How about Mr. Harry Platt -- do you know who
Mr. Harry Platt is?

A He is the arbitrator.

Q Did you know prior to the decision of the
System Board that Mr. Platt was the arbitrator?

1
2 A Other than through the correspondence I received
3 from him.

4 Q Is the answer "yes," that you did know he
5 was the arbitrator through the correspondence?

6 A Yes, the answer is "yes."

7 Q Had you ever met Mr. Platt personally?

8 A No.

9 Q Did you have any reason to believe that Mr.
10 Platt had formed an opinion with respect to your case?

11 A I would say, no.

12 Q Did you ever review any account of Mr.
13 Platt's decisions in other System Board cases?

14 A I was aware of it.

15 Q You were aware of his decision in other
16 System Board cases?

17 A Yes.

18 Q Of what System Board cases were you aware?

19 A I can't say because I don't know, because they
20 just put down numbers.

21 Q Where did you obtain the knowledge as to
22 Mr. Platt's performance or decision in other System
23 Board cases?

24 A In the union yearbook.

25 Q In which yearbook was that?

1
2 A '71, '72.

3 Q Do you recall what was stated in those year-
4 books?

5 A Simply, that all the five -- all the grievances
6 that had gone before the five-man board for adjudication
7 were denied.

8 Q Did Mr. Platt sit as neutral on all those
9 five-man board cases, do you know?

10 A This I don't know.

11 Q Do you know how many he sat on?

12 A No, sir, I don't know.

13 Q Did you know prior to the decision of the
14 System Board, whether the company and the union used
15 Mr. Platt as the exclusive neutral, or did they use
16 other neutrals from time to time?

17 A I don't know.

18 Q Did you make any investigation as to Mr.
19 Platt's background or credentials as an arbitrator?

20 A No.

21 Q Did you know whether Mr. Biuso had sub-
22 mitted his grievance to a System Board of Adjustment?

23 A Yes, I did know.

24 Q Was that board comprised of the same indi-
25 viduals as sat on the board that rendered this decision

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q When you filed your original grievance, was the subject of that -- why don't you tell me what was the subject of that grievance -- what were you complaining about?

A The training and being excluded on the check rights, being framed out.

Q Let's try to --

A I'm sorry.

Q The --

A The nomenclature is poor.

Q Well, actually, I get some of the flavor of that.

A I'm sorry.

MR. KENNY: Just answer the question.

Q Was the complaint addressed to the fact that you had been terminated by American Airlines because of their failing you on the training -- is that what your testimony is?

MR. KENNY: I object to the form.

Q Well, you say you were complaining about the training; is that right?

A That's right.

Q What was the consequence of the training that you were complaining about?

1
2 A The consequence?

3 Q Yes; I mean, did you want more training?
4 What was the object of the grievance?

5 A That's right. I wanted to be treated the same
6 way everybody else was treated. That's what I wanted.

7 Q You wanted --

8 A I wanted what the company policy was, what the
9 union policy was; training to proficiency -- what was
10 told and was given to other people. That's exactly
11 what I wanted, sir -- no more and no less.

12 MR. KENN: Don't get excited, Neil.

13 Q Was it your understanding that that training
14 would continue indefinitely until proficiency were at-
15 tained? When you talk about "training to proficiency,"
16 what do you mean by that?

17 A That was the stated policy of the company and the
18 union. --

19 Q And --

20 A -- training to proficiency.

21 Q Did that mean regardless of the length of
22 time the training took?

23 A That's what was stated, sir; training to pro-
24 ficiency.

25 Q That was your understanding of "training to

1
2 A That's right.

3 Q Did you understand that? What did you un-
4 derstand that to mean in terms of the termination or
5 after the termination, or what?

6 A He could not help me.

7 Q Did you have any conversations with Mr.
8 Fisher after that?

9 A Yes.

10 Q What sections of the contract did you rely
11 on when you filed your original grievance? Was it
12 section 23 of the contract?

13 A I don't know.

14 MR. SEHAM: Off the record.

15 (Discussion off the record.)

16 BY MR. SEHAM:

17 Q In filing your original grievance, were you
18 making the allegation that the company was in violation
19 of the contract?

20 A Yes.

21 Q The labor agreement?

22 A Yes.

23 Q What provisions of the contract were you
alleging -- either in the grievance or did you intend
to allege later on -- the company had violated?

1
2 the grievance what the violation of the contract was;
3 is that right?

4 A May I speak with my counsel?

5 Q No.

6 MR. KENNY: No, answer the question as best
7 as you can.

8 Q If you didn't know, you didn't know.

9 A At that time, I didn't know.

10 Q When you say you didn't know, you didn't
11 know the section of the contract or you didn't know the
12 acts which American Airlines did which you claim violated
13 the contract?

14 A No, I didn't know the chapter and verse.

15 Q Did you know the acts that American com-
16 mitted which had violated the contract, in your opinion?

17 MR. KENNY: Was this down at the school?

18 MR. SEHAM: I don't know where it was, and
19 I don't -- I am talking about the time he filed
20 this grievance.

21 Q Now, at the time you filed this grievance,
22 you were complaining of something. You say you don't
23 know of the chapter and verse of the contract.

24 What acts, then, were you complaining of
25 that American committed in violation of the contract?

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A I passed the simulator, and I was fired; that's No. 1.

Q And is that it?

A No, there was more to it than that.

Q What other acts by American Airlines were you complaining of at the time you filed this grievance?

A I was -- passed the simulator; advanced to the airplane, given three hours and 23 minutes in the airplane; sent back to the simulator for more check rides, which I passed; sent home to New York; a couple of weeks later, called out -- took another check ride -- passed it; and the "pass" became a "fail" and I was terminated.

Q Have you fully described the acts of American Airlines that you were complaining of in this grievance, in the original grievance?

A I think that sums it up, except for instructions and instructors.

Q When you say "except for," what do you mean by "except for"?

A Well, this would be all-inclusive, Mr. Seham.

Q When you say "all-inclusive," does that mean it relates to your earlier answer --

A Yes.

Q -- the answer you just gave?

1
2 Captain Reetz that you wanted as a result of your griev-
3 ance?

4 A I wanted to either go back to flight officer
5 or get the training for copilot.

6 Q Did you specifically ask Captain Reetz for
7 more training as a copilot?

8 A Yes.

9 Q Why did you tell Captain Reetz that you
10 wanted more training?

11 A Because I could do the job, that's why.

12 Q You could do the job?

13 A That's right.

14 Q And did Captain Reetz say anything to you?
15 What was Captain Reetz' response to that statement by
16 you?

17 A He said, "That's not true." He had checked.

18 Q He had checked?

19 A That's right.

20 Q Is it still your view that you can do the
21 job?

22 A That's right.

23 Q Is it your present belief that you are
24 qualified to fly as a copilot for American?

25 A That is correct.

23sa

bias was of the Board?

MR. KENNY:

No, your Honor.

THE COURT:

Frankly, I cannot find where at that stage, see, he makes a charge which is a serious charge. Did they ever make a record before any of these panels?

MR. KENNY:

No, your Honor. Your Honor, we have no claim in this lawsuit for bias of the panel. That is not our lawsuit. Your Honor, no matter how, - it was brought a little late, but it is still a good cause of action.

THE COURT:

You do not claim that the panel was biased?

MR. KENNY:

No, that is not our claim, Judge.

THE COURT:

All right, because I think we would agree if once made, it is a serious charge.

MR. KENNY:

I would agree to that, your Honor. Your Honor, I will be most candid with the Court. I wish most of these things were never written.

MAY 22 1974

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

HOWARD K. PHILLIPS
CLERK, UNITED STATES
COURT OF APPEALS
TENTH CIRCUIT

No. 73-1697

BERT NEAL, EUGENE
 SONTHEIMER, R. F. MCGILL,
 and others similarly
 situated,

Appellants,

v.

AMERICAN AIRLINES, INC.,
 a corporation, and THE
 TRANSPORT WORKERS UNION
 OF AMERICA, AFL-CIO,

Appellees.

Appeal From The
 United States District Court
 For the Northern District
 of Oklahoma
 (D.C. # 72-C-428)

✓ Joseph L. Hill III, Tulsa, Oklahoma, for Appellants.

John A. Johnson, Oklahoma City, Oklahoma (Lloyd Benefield, Oklahoma City, Oklahoma, on the Brief), for Appellee, American Airlines, Inc.

Maynard I. Ungerman, Tulsa, Oklahoma (John F. O'Donnell, New York, New York, and Ungerman, Grabel and Ungerman, Tulsa, Oklahoma, and Asher Schwartz, New York, New York, of Counsel, with him on the Brief), for Appellee, The Transport Workers Union of America, AFL-CIO.

Before CLARK, Associate Justice Retired*, HILL and SETH,
 Circuit Judges.

*Of the Supreme Court of the United
 States, Sitting by Designation.

SEIN, Circuit Judge.

This is an action seeking damages and injunctive relief for the refusal by American Airlines and The Transport Workers Union (TWU) to recognize the seniority rights to which the plaintiffs allege they are entitled under various labor contracts negotiated between American and the TWU.

Jurisdiction is asserted under the Railway Labor Act (45 U.S.C. §§ 151 et seq.) and under 28 U.S.C. § 1337. The plaintiffs are appealing from the order of the district court dismissing the action on the ground that administrative remedies under the Railway Labor Act have not been exhausted.

The named plaintiffs were all longtime employees of American Airlines and former members of a bargaining unit represented by the TWU. At various times and as early as 1957 each plaintiff had accepted a promotion from the bargaining unit to a first-level management position. The promotions meant, of course, that plaintiffs would no longer be members of the TWU nor of the bargaining unit from which they were promoted. The plaintiffs continued to function in their supervisory capacities until laid off in 1971. They maintain, however, that under the provisions of the labor agreement in force when the promotions were accepted and upon which the plaintiffs relied in accepting the promotions, they retained their bargaining unit seniority and are now entitled to exercise such seniority in bidding on positions within

their former bargaining unit. American and the TWU contend that the contracts containing the seniority provisions upon which the plaintiffs rely have expired, and that under the provision of the contract currently in force the plaintiffs' previously accrued seniority in the bargaining unit has ended. Because of the disposition below, we need not discuss the merits. We agree with the district court that the failure to exhaust the administrative remedies provided under the Act deprives the court of subject matter jurisdiction.

Plaintiffs would have us excuse their failure to take their grievances before the appropriate board of adjustment as contemplated by the Act (45 U.S.C. §§ 153, 184) because such a procedure in this case would be futile and because, in addition to the air carrier, they have joined the TWU as a party defendant. To this end they rely extensively on the cases of *Conley v. Gibson*, 355 U.S. 41 (1957), and *Glover v. St. Louis-San Francisco Ry.*, 393 U.S. 324 (1969). Such reliance, however, is misplaced. Both cases involved allegations by union members that they were not being fairly represented by their bargaining agent. In each case the Court characterized the dispute as being essentially between the employees and their bargaining agent rather than employees and their carrier. Furthermore, in *Conley* the Court determined that the labor contract was involved only incidentally, and in *Glover* it determined that the contract was involved only to the extent that its provisions were allegedly being applied

discriminatorily. Thus, based upon its characterization of the nature of each controversy, the Court determined in each case that jurisdiction did not lie exclusively with the board of adjustment in the first instance, and that resort to such board would be a useless gesture. Plaintiffs contend that the same determinations should be made with respect to their action. We cannot agree. While we perceive a certain kinship between the plaintiffs' grievance and the disputes in Conley and Glover, stemming from the plaintiffs' allegations herein that they have been unfairly treated in labor agreements negotiated subsequent to their respective promotions from the bargaining unit, we conclude, nevertheless, that in the last analysis, this action centers upon contractual provisions. Thus the allegations that the union should have continued to bargain for plaintiffs does not rise to the issue considered in the Conley or Glover cases. The basic reliance for seniority is upon the terms of the contracts existing when plaintiffs left the bargaining unit.

Section 204 of the Railway Labor Act (45 U.S.C. § 184) affords the appropriate board of adjustment jurisdiction over "[t]he disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions. . . ." As we noted in *McMullans v. Kansas, Oklahoma & Gulf Ry.*, 229 F.2d 50 (10th Cir.), "[s]eniority and nondiscriminatory discharge, along with wages,

are fundamentally contractual and are the most common subjects of bargaining." We acknowledged therein that the right to bargain for seniority is authorized under the Act, but that "[u]hose who acquire seniority rights under a contract are bound by the possibility that the contract may be changed, and the rights thereunder revised or abrogated." We thus recognized that seniority rights fall within the category described by the Act as "rates of pay, rules, or working conditions," and are therefore a subject concerning which carriers and employees have a duty "to make and maintain agreements." 45 U.S.C. § 152. Disputes arising out of such agreements would thus be subject to the jurisdiction of the appropriate board of adjustment.

In further support of our characterization of the action we quote the first portion of the prayer for relief from plaintiffs' complaint:

" . . . [T]hat the Court find the contractual agreement between the defendant Union and the Company does through the respective articles set out herein, entitle each and every member of said class and the plaintiffs herein: (1) to be reinstated by the defendant Company, and (2) to exercise their respective accrued seniority rights in bidding on a position in the bargaining unit."

From this and other portions of the complaint, it appears that in plaintiffs' own view this action is essentially one to vindicate an asserted contract right. The fact that in this instance the TWU supports American's interpretation and application of the disputed provisions in the various agreements does

not thereby transform the grievance into one against the union itself.

While not directly in point, we are struck by the obvious similarities between this case and the case of *Crusen v. United Air Lines, Inc.*, 239 F.2d 863 (10th Cir.), wherein we affirmed and adopted the opinion of the late Judge Knous reported at 141 F.Supp. 347. In that case a group of airline pilots contended that they were being unlawfully deprived of their contractual seniority rights by the collusive action of the airline and their bargaining agent. Although the union was not joined as a defendant in the action, as it was in this case, the plaintiffs nevertheless alleged that they were challenging the validity of the contract rather than its interpretation and that the asserted conspiracy between the union and the airline rendered resort to the System Board of Adjustment futile. The district court determined from the formulation of the complaint itself, which resembled the complaint in this action, that the plaintiffs were seeking relief under the contract rather than challenging its validity. As noted, that determination is equally applicable to this case. The court then turned its attention to the question of the alleged futility of the administrative remedies, and quoted the following passage from *Spires v. Southern Ry.*, 204 F.2d 453 (4th Cir.), a case which was also notably similar to this one:

"Where the statutory representative makes contracts of the sort here involved having unfavorable effects upon some members of the craft who present a grievance on that account, it is the Adjustment Board which has jurisdiction of the controversy, and not the courts; for, as we have seen, it was just this sort of controversy that the Adjustment Board was created to handle."

Judge Knous found that neither simple allegations of projected administrative bias nor allegations of conspiracy between the union and the carrier were sufficient demonstration of futility to deprive the board of adjustment of its original jurisdiction.

We recognize that in addition, to the Conley and Glover cases, the Supreme Court has considered the necessity of exhausting administrative grievance procedures in other labor cases decided since *Crusen*. See for example *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965), and *Vaca v. Sipes*, 386 U.S. 171 (1967). We find in those cases, however, nothing which would cast doubt upon the continued validity of the rationale of *Crusen* and much which would support it.

In summation, we would observe that this case is before us without allegations that resort to administrative grievance procedures has even been attempted. Plaintiffs seek to excuse this oversight and distinguish their case from other labor exhaustion cases on the grounds that the union is here a party defendant and that the nature of the dispute either deprives the board of original jurisdiction or makes resort to it a futile gesture. For the reasons set forth above, we have concluded that the dispute

is of a type referable to the board. With this conclusion established we cannot allow the joinder of additional parties nor the bare prediction that administrative procedures will prove unavailing to deprive the board of its original jurisdiction. *Republic Steel Corp. v. Maddox*, 379 U.S. 650; *Transport Workers Union of America v. American Airlines, Inc.*, 413 F.2d 746 (10th Cir.). We therefore affirm dismissal of the action for want of subject matter jurisdiction.

Plaintiffs also argue that they have asserted a valid third party beneficiary claim cognizable under the court's pendent jurisdiction. Without alluding to the merits of that claim, we simply note that upon dismissal of the federal claim for want of subject matter jurisdiction, the pendent state claim was also properly dismissed. *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).

Plaintiffs' contention that they should have been afforded oral argument on the motion to dismiss is without merit. *Hazen v. Southern Hills National Bank of Tulsa*, 414 F.2d 778 (10th Cir.); Fed.R.Civ.P. 78.

The judgment of the district court is AFFIRMED.

32ss
AFFIDAVIT OF NICHOLAS J. O'CONNELL IN
SUPPORT OF MOTION FOR PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----X

NEIL F. CROWLEY and LOUIS F. AMATUCCI,	:	:	
	:	:	
Plaintiffs,	:	:	72 CIV. 281 JTC
	:	:	
-against-	:	:	<u>AFFIDAVIT</u>
	:	:	
AMERICAN AIRLINES and ALLIED PILOTS ASSOCIATION,	:	:	
	:	:	
Defendants.	:	:	

-----X

STATE OF TEXAS)
 : ss.
COUNTY OF TARRANT)

NICHOLAS J. O'CONNELL, being duly sworn, deposes and
says:

1. I am the President of Allied Pilots Association
("APA"). I make this affidavit on the basis of personal know-
ledge of the facts herein. This affidavit is submitted in
support of APA's Motion for a Protective Order, pursuant to the
Order of Judge John T. Curtin dated August 5, 1974.

2. The Court, in its Order dated August 5, 1974,
instructed plaintiffs to "file affidavits explaining in detail
their charge that the documents previously referred to [undated
"instructions" (Exhibit "A" hereto) and a letter dated
August 2, 1972 (Exhibit "B" hereto) alleged by plaintiffs to
have been prepared and promulgated by APA] were genuine and
were deliberately used by the Allied Pilots Association to
their detriment." Plaintiff Crowley's affidavit dated
August 23, 1974 fails to demonstrate that APA was responsible

3388
AFFIDAVIT OF NICHOLAS J. O'CONNELL IN
SUPPORT OF MOTION FOR PROTECTIVE ORDER

in any way for either document; further, as a logical consequence, Crowley's affidavit fails to explain how such documents were used to plaintiffs' detriment. Thus, the plaintiffs have failed to comply with the Court's Order of August 5, 1974.

3. With respect to the undated "instructions" (Exhibit "A" hereto), Crowley states only that they were "given to me" by an unidentified person in his training class. No facts are alleged to indicate that the document had any connection whatsoever to APA or to any APA officer, or that the document was prepared, distributed or condoned by APA or any APA officer. I refer the Court to my affidavit of July 19, 1974 (Exhibit "C" hereto) with the affidavit of Martin C. Seham, APA's General Counsel, of March 15, 1974 attached thereto (Exhibit "C-1" hereto), and reaffirm my statements under oath therein that the document was an anonymous document with no connection whatsoever to APA or any APA official. Plaintiffs have thus failed to demonstrate, as instructed by the Court, any proper foundation for the document.

4. Plaintiff Crowley's statement that it was his "understanding" that the document was distributed to all flight instructors is conclusory and fails to state a single fact underlying this alleged understanding; it adds nothing to the state of the record prior to its submission and should therefore be disregarded. There are no allegations in Crowley's affidavit that the document was given to him in circumstances guaranteeing its authenticity or that the person

348a
AFFIDAVIT OF NICHOLAS J. O'CONNELL IN
SUPPORT OF MOTION FOR PROTECTIVE ORDER

who gave it to him considered it to be anything other than a hoax. There are no allegations that the person who gave the document to Crowley had any connection with it or any knowledge of its unknown origin or any official connection with APA; Crowley's suggestions that "perhaps I could recall" the name of the person giving him the document by reviewing voluminous training files is so tenuous as to be meaningless. The very notion that further research might recall the name of the individual passing the document suggests that the original incident was totally bereft of even the appearance of a connection with the Union. My own sworn affidavit, based on my investigation into the document and affirmatively stating the document had no connection whatsoever to APA, presents far more conclusive proof on the question of APA's connection to the document than Crowley's ephemeral allegations which are no more than a hope to somehow find someone who might thereafter possibly be able to tie the document to APA. That hope is groundless, as is confirmed by plaintiffs' failure to provide the foundation requested by the Court for the document.

5. With respect to the letter of August 2, 1972, plaintiff Crowley merely states it was received in the mail. There is virtually no fact more uncontroverted than that anyone can use the U.S. postal service. APA might mail newsletters and publications in the U.S. mail but it can not control what other persons choose to mail. On this rationale APA would also be responsible for filling Mr. Crowley's mailbox with advertising circulars, pornography and the Sears Roebuck catalog. Crowley's affidavit is devoid of any fact linking the

358a
AFFIDAVIT OF NICHOLAS J. O'CONNELL IN
SUPPORT OF MOTION FOR PROTECTIVE ORDER

letter in any way to APA. I again refer the Court to my affidavit of July 19, 1974 (Exhibit "C" hereto) with the affidavit of Martin C. Seham, APA's General Counsel, of February 13, 1974 attached thereto (Exhibit "C-2" hereto), and reaffirm my statements under oath therein that the letter was a fraud and a forgery and had no connection whatsoever to APA. My sworn affidavit, based on my investigation into the letter, remains the dispositive proof before this Court as to the spurious nature of the letter; plaintiffs have made no showing to the contrary.

6. Plaintiff Crowley also refers to two additional documents he alleges APA improperly failed to produce as requested, a set of resolutions with a cover letter dated May 21, 1971 marked "Exhibit 4" in Crowley's affidavit (Exhibit "D" hereto) and a letter dated May 21, 1971 marked "Exhibit 5" in Crowley's affidavit (Exhibit "E" hereto). These documents are irrelevant to the matters discussed and the instructions given in the Court's Order of August 5, 1974. They are a last-ditch effort by plaintiffs in their attempt to substantiate their unfounded claims. Both the resolutions and the May 21, 1971 letter were mailed to Amatucci and Crowley as APA members and there was no intent or belief by APA that it was concealing material relevant to the present litigation in limiting its production of documents to the issues involved in this case.

7. These documents are wholly irrelevant to the claims of these plaintiffs; they clearly reflect an attempt to recruit former TCA pilots into APA. Amatucci and Crowley were both

AFFIDAVIT OF NICHOLAS J. O'CONNELL IN
SUPPORT OF MOTION FOR PROTECTIVE ORDER

members of APA beginning shortly after the merger. Plaintiffs were among the earliest to respond to APA's membership drive and as such, they were models for APA to point to in its continuing drive to recruit former TCA pilots. If anything, APA felt satisfaction with these new members and sought to provide the most favorable treatment possible to them to encourage other former TCA pilots to join as well. The documents to which Amatucci and Crowley refer reflect on the situation that existed with respect to other former TCA pilots in the group. If they raise any inference at all, it is of sympathetic treatment for these two individuals. (I add parenthetically that APA has always adhered to its statutory duty under the Railway Labor Act to represent all employees in the bargaining unit, including non-members, without discrimination.)

8. Finally, it should be noted that the documents, though offered by plaintiffs to demonstrate prejudice against them, fail to do so. The letter accompanying the resolutions (Exhibit "D" hereto) states: "Your efforts and the efforts of all former TCA pilots could more constructively be directed by joining our organization and working with all of the other American pilots on an equal basis to improve our professional status." (Emphasis added.) The first resolution provides for administration of American's medical program "without discrimination". The second is similar and provides for maintaining professional standards "without discrimination". The third, which was part of APA's effort to enlist all former TCA pilots, cannot be read to have negative implications for former TCA pilots who already were APA members as were Amatucci and Crowley. The final resolution was similarly inapplicable to former TCA pilots who had already become APA members. In a like manner, the letter

AFFIDAVIT OF NICHOLAS J. O'CONNELL IN
SUPPORT OF MOTION FOR PROTECTIVE ORDER
dated May 21, 1971 (Exhibit "E" hereto) had no applica-

tion to dues-paying APA members such as Amatucci and Crowley.

9. Plaintiff Crowley has also attached to his affidavit a copy of the minutes of the July 29, 1971 New York domicile meeting, Exhibit "6" thereto (Exhibit "F" hereto), produced by APA in response to plaintiffs' Notice to Produce. That document was included among those produced, even though APA considered it irrelevant, pursuant to Paragraph 8 of APA's Response to Plaintiffs' Notice of Request for Production of Documents (Exhibit "G" hereto) and because of a peripheral reference to "qualifications" in item 1 on page 1 (the second item so numbered on that page) and a mention of "ATPC training" in item 6 on page 2. If anything, the production of this item indicates the liberal interpretation given by APA to plaintiffs' production notices. I call the Court's attention to item 3 on page 1: "New committee to be formed to encourage TCA pilots to join APA." I further call the Court's attention to item 3 on page 2, immediately above the passage quoted in Crowley's affidavit: "Twenty-one former TCA members have joined APA, but we need all the conversions we can get." Two of those former TCA pilots whom APA was proud to have in its ranks were Amatucci and Crowley. Nothing in the domicile minutes establishes any bias towards them.

10. Crowley's affidavit has failed to indicate any grounds for deposing any APA member. The point of the Court's Order of August 5, 1974 was to require plaintiffs to lay a foundation for the documents previously introduced and to establish a convincing need for the deposition of particular APA officers. This has not been done. There are no allegations in the affidavit which demonstrate that deposing APA officers,

A
AFFIDAVIT OF NICHOLAS J. O'CONNELL IN
SUPPORT OF MOTION FOR PROTECTIVE ORDER

or any other discovery procedures, would produce any new fact relevant to the Court's decisions on the pending Motions for Summary Judgment. The Court should, therefore, rule on these Motions at its convenience but without further applications by the plaintiffs.

DATED: *August 29*, 1974

Nicholas J. O'Connell
NICHOLAS J. O'CONNELL

SWORN TO BEFORE ME THIS *29*th DAY

OF *August*, 1974

Thomas J. O'Connell
Notary Public

TA situation

a. *Flight Instructions.*

Nick's "message" more than adequately presented. Recommend all instructors prominently wear and display APM pin to indicate position. Have APM applications. Brief full time simulator instructors of attitudes and objectives. Accept no mixed student pairings. Isolate TA students both in CPT, simulator, and aircraft. Adopt APM attitude of complete knowledge and proficiency in every respect. Provide only basic requirements of maneuvers and source to study and let individual practice until proficient or re-evaluated. Extensive instruction on techniques given to APM crewmembers not required.

b. *Scheduling.*

Necessary to isolate TA crewmen, in CPT, simulator, and aircraft. Then they will quickly realize the benefits of APM membership and will not have available to them the extensive coaching and instruction normally given in all courses. They can then have each days work outlined and either demonstrate proficiency or be retained at that level until they master the subject themselves.

c. *AA crewmen-*

a. AA crewmen at the Flight Academy should positively isolate and socially ostracize the TA non APM members of school, the hotel etc.. The prominent display at all times of the APM pin will suitably identify each person. This will be a healthy environment for each APM crewman, instructor, APM management, to let every one know one's position. TA crewmen should be especially sensitive to this. Additionally, seating in all classrooms should positively segregate the APM versus the TA crewmen and should be instituted immediately!

EXHIBIT "A"

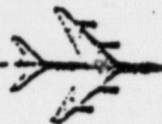
d. *NA crewmen*

In addition to positive identification and "special status" through listings on bulletin boards, separate seating in classrooms, separate scheduling in CPT, simulation and aircraft, both the FIM agents and members of NPA training committee, Safety or special local council committees should actually monitor classes, CPT, simulation or aircraft instruction. This will keep a special prominence and a very proper "pressure" on not only the crewmen but Flight Academy instructors and lend the cohesion many times needed.

e. *Special NPA monitor committee*

NPA representatives and committee members should always be more than welcome at the Flight Academy to observe, evaluate and assist the NA crewmen first and to make constructive recommendations. Particularly at this critical time NPA Headquarters should advise the top staff at the Flight Academy that starting now and on a continuing basis Special Committee members will present a letter from NPA to Ted Melder on his representative and will be attending classes, briefings, CPT instruction, simulation instruction and aircraft instruction. On a long term basis this is important for the instructors to be under this evaluation but especially at this most critical time. These Special Committee members should, of course, prominently wear a large colorful NPA/NAM namplate and identification tag properly printed which can be created and attractively made of plastic locally. This "presence" should provide an adequate catalyst for all concerned!

A
P
A ALLIED PILOTS ASSOCIATION
GATEWAY PLAZA, 2021 AVENUE "E" EAST, SUITE 208 • ARLINGTON, TEXAS 76010 • PHONE: 817-261-0261



August 2, 1972.

TO: ALL MEMBERS , ALLIED PILOTS ASSOCIATION

Gentlemen:

It has now been almost one and one-half years since the TCA and American merger was consummated. In that time period APA has spent many thousands of dollars in legal fees and untold thousands of man hours to protect the interests of the American pilots against what I consider a cancerous growth namely the TCA pilots. We were good enough to offer to this group all the benefits that has taken us numerous years to accrue. We asked for nothing in return. The TCA pilots consider themselves an elite group, aloof from the American pilot. This is truly ludicrous, as 93% of all the TCA pilots required 56% to 110% additional time in training. One just has to look at their background to understand why no legitimate airline would consider hiring them. Three prime examples of the so-called average TCA pilot type are Crowley, Anagnosi, and Biuso. These TCA pilots fired by American for incompetence and because they lacked the basic intelligence to grasp complex sets of material, all had prior employment records indicating dismissals for incompetence, thief of company property, and one even threatened to kill another pilot. Gentlemen, we do not need men such as these! The remaining TCA pilots will not find it as easy to get money from Uncle American!. From now on all the TCA pilots will be appraised on their ability or lack of it. The American crew members will pay special attention to any and all infractions of even the smallest nature made by the TCA pilot. It will be your duty to report infractions to this office. The TCA group will also find that check rides and training in Dallas will be far from a boring experience. It will be an EXPERIENCE!. To sum up, If a cancerous growth cannot be treated by medication, then it must be cut out and killed before it causes further injury to a healthy body!.

Sincerely,

Nicholas J. O'Connell
Nicholas J. O'Connell, Jr.
President

~~EXHIBIT~~

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

----- X

NEIL F. CROWLEY and LOUIS F. AMATUCCI, :
 :
 : Plaintiffs, : AFFIDAVIT
 :
 : -vs- : 72 Civ. 281
 :
 AMERICAN AIRLINES and ALLIED PILOTS : Judge Curtin
 ASSOCIATION, :
 :
 : Defendants. :
 :
 ----- X

STATE OF TEXAS)
 : ss.:
 COUNTY OF TARRANT)

NICHOLAS J. O'CONNELL, being duly sworn, deposes
and says:

1. I am the President of Allied Pilots Association
(hereinafter "APA"). I am personally familiar with the facts
in this affidavit, and I make this affidavit on the basis of
personal knowledge. This affidavit is submitted in accordance
with the Decision and Order of Judge John T. Curtin dated
July 1, 1974.

2. Judge Curtin's Decision and Order referred to
a letter dated August 2, 1972, alleged to have been prepared
and signed by me, which was attached as Exhibit "G" to plain-
tiffs' motion for discovery filed February 14, 1974. A copy
of that letter is attached to this affidavit as Exhibit "A".
In response to this letter, Martin C. Scham, General Counsel
to APA, submitted an affidavit sworn to February 13, 1974,
explaining that this letter was forged and fraudulent and was

EXHIBIT "C"

not authorized, prepared or circulated by APA. A copy of Mr. Seham's affidavit is attached hereto as Exhibit "B". In his affidavit, Mr. Seham further explained that this same letter had previously been considered in an extended labor arbitration held before Professor Russell A. Smith pursuant to orders of the Civil Aeronautics Board at the time of the merger of Trans Caribbean Airways into American Airlines, to determine the manner in which the seniority lists of the two pilots' groups might be integrated after the merger. Mr. Seham explained that the document was excluded as a hoax from the Arbitrator's consideration in that proceeding by agreement of all concerned. I know the facts stated in Paragraph 3 of Mr. Seham's affidavit referring to the said letter to be true and incorporate them herein. The letter in question was produced on a stolen APA letterhead with either a forged or montage signature. I neither prepared nor signed the letter in question. The letter was not authorized, prepared nor circulated by APA.

3. Judge Curtin's Decision and Order also referred to a document alleged by plaintiff Crowley to be a set of instructions from APA to the American Airlines instructors at the American Flight Training Center at Great Southwestern Airport, attached as Exhibit "1" to the affidavit of plaintiff Crowley filed March 11, 1974. A copy of that document is attached hereto as Exhibit "C". In response to this document, Martin C. Seham submitted an affidavit sworn to March 15, 1974, explaining that the document was not an official document of APA and was not produced, authored nor in any way promulgated

or distributed by any APA officer or official, and was not in any way financed by APA. A copy of Mr. Seham's affidavit is attached hereto as Exhibit "D". I know the facts stated by Mr. Seham in Paragraph 2 of his affidavit referring to the said document to be true and incorporate them herein. The document is an anonymous document and has no connection whatsoever with any APA officer or official.

4. As President of APA, I became aware of these two fraudulent documents as they were originally circulated several years ago. At that time, I made a thorough investigation, and I determined that the documents lacked authenticity. To emphasize this point, I determined that the documents were complete frauds and had no connection whatsoever with APA.

Dated: July 19, 1974

Nicholas J. O'Connell
NICHOLAS J. O'CONNELL

Sworn to before me this

19th day of July, 1974.

[Signature]
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----x
NEIL F. CROWLEY and LOUIS F. AMATUCCI, :

Plaintiffs, :

-against- :

AMERICAN AIRLINES and ALLIED PILOTS :
ASSOCIATION, :

-----x
Defendants. -----x

AFFIDAVIT

72 Civ. 281

Judge Curtin

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARTIN C. SEHAM, being duly sworn deposes and says:

1. I am the General Counsel for the Allied Pilots Association (hereinafter APA) and am personally familiar with the operations and procedures of that Organization. I have occupied that position since the Organization was formed. This Affidavit is submitted for the purpose of correcting certain statements appearing in the Defendants' Affidavits submitted in opposition to American Airline's Motion for Summary Judgment. Since the facts in question are within the knowledge of the APA and are of importance both in this litigation and in the ongoing operation of that Association, it is important that this Affidavit be offered and considered by the Court. As the Court is aware, APA also has pending

~~EXHIBIT "C-1"~~

Exhibit "C-1"

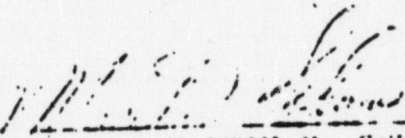
before it is Motion for Summary Judgment; however, no answering papers have been received and therefore a reply cannot be made at this time.

2. Attached to the Affidavits of the Defendants (Exhibit 1 to Crowley Affidavit; Exhibit D to Amatucci Affidavit) is an anonymous document purporting to be instructions to American Airlines Flight Instructors. The document was apparently prepared on plain paper and does not show any connection with the APA. I can assure the Court of my own knowledge and upon personal verification with the officials of APA that the document in question is not an official APA document, was not produced, authored, or in any way promulgated or distributed by any APA officer or official, and was not in any way financed by APA. In all events, it has nothing whatsoever to do with the continuing position of the Association that the grievance and System Board procedures were available to the Plaintiffs on a wholly nondiscriminatory basis.

3. Contrary to the Plaintiffs' assertion, the agreed upon requirement for pilots in the employ of American Airlines has been that they be capable of qualifying for advanced positions "in turn". For so long as APA has been representing

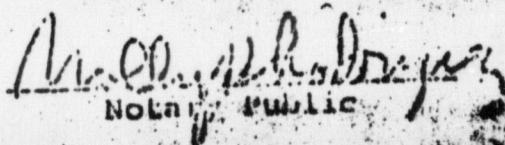
the American pilots, and even before, this has been accepted as part of the so-called "up or out" policy for pilots. There has been no practice at American as there was, for instance at TCA, permitting a pilot to remain in an inferior position because he either failed to or chose not to upgrade in turn. Because of the extremely high hiring standards that American has followed for pilots, there have been relatively few situations in which a pilot has failed to upgrade, requiring his termination; such situations have, however, occurred in cases other than those involving former TCA pilots.

4. Neither the foregoing nor any of the statements made by the Plaintiffs raise any issue of fact as to the willingness of APA to secure a full and fair hearing, vigorously presenting the case on behalf of its members, Amatucci and Crowley before the contractually designated and statutorily required System Board of Adjustment.


MARTIN C. SEIFER

Dated: March 15, 1974

Sworn to before me this
15th day of March, 1974.


Notary Public

IRVING D. GOODMAN
Notary Public, State of New York
My Comm. Expires 12/31/76
Qualified in the County of
Schenectady, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
:
Neil F. Crowley and Louis F. Amatucci,
:
Plaintiffs,
:

-against-

American Airlines and Allied Pilots
Association,

Defendants.
:
-----X

AFFIDAVIT

72 Civ. 281 JTC

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

MARTIN C. SEHAM, being duly sworn, deposes and says:

1. I am an attorney admitted to the Bar in the State of New York and General Counsel to the Defendant, Allied Pilots Association (APA). This Affidavit is being submitted in opposition to a motion by the Plaintiffs pursuant to Rule 37(a).

2. The Plaintiffs have undertaken to relate their discharge from the Company to events arising from a merger of their former employer, Trans Caribbean Airways (TCA) into American Airlines (American). The undersigned, in his capacity as General Counsel to APA (the pilots organization representing American pilots) is personally involved in all aspects of the merger as it affected the pilot group and as such can offer these comments in an individual and representative capacity.

3. The entire basis for the motion directed to APA is set out at the bottom of page 2 and page 3 of the affidavit of James M. Kenny. Mr. Kenny's argument relies exclusively upon APA's alleged failure to produce a writing

attached to his Affidavit as Exhibit G. That document is a scandalous piece of material designed to inflame the former TCA pilots against APA, the new representative of the combined group. It was produced on a stolen APA letterhead with either a forged or montage signature from the Organization's president. In short, the letter upon which Mr. Kenny relies is a malicious hoax which we believe was perpetrated by representatives of the Organization formerly representing the TCA pilots. Certainly APA was under no obligation to produce, pursuant to the Plaintiffs' motion, this false document.

An attempt was made in another proceeding to introduce this document and at that time it was rejected as a false and cruel hoax. Pursuant to orders of the Civil Aeronautics Board an extended arbitration was held before Professor Russell A. Smith to determine the manner in which the seniority lists of the former TCA pilots and the American pilots should be integrated after the merger. During the course of that proceeding this same document, which is now being given additional currency by the Plaintiffs, was tendered by the representatives of the former TCA pilots. Representatives of APA, including Captain O'Connell, the supposed signator, were present.

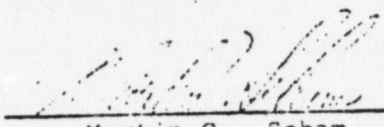
Captain O'Connell and other APA representatives present assured the Arbitrator that the document was a hoax and designed to inflame the emotions of the pilot group. By agreement of all concerned the document was excluded from the Arbitrator's consideration. The fact that the document in question is

a hoax comes as no surprise to the Plaintiffs. In the latter part of 1972 a Partner in this firm, Fred Klein, Esq., had occasion to discuss this document with Kevin Quill, Esq., the Attorney of Record for the Plaintiffs in this case. At that time, Mr. Klein stated unequivocally that the document was a hoax. We do not know whether Mr. Quill failed to advise Mr. Kenny of this conversation or whether Plaintiffs simply choose to disbelieve the advice that had been given. However, their own unproven, unsustained, yet contradicted, belief in the authenticity of the document, forms no basis for the motion now before the Court. Indeed, it is clear that in light of the advice previously given to the Plaintiffs concerning this document, this unsupported motion must be considered frivolous.

4. I would only add for the Court's consideration one other fact which is consistent with the finding that the document is a hoax. In the contest for the loyalties of the former TCA pilots after the merger, one of APA's prime objectives was to encourage those individuals to become members of APA. The large majority of the former TCA pilots did not choose to become APA members. However, the three individuals named in the hoax letter, Crowley, Amatucci and Biuso, all became members of APA. Therefore, it is understandable why disgruntled former TCA pilots might have chosen these three individuals as the victims of the cruel hoax reflected in Exhibit G. APA, on the other hand, would certainly not want to see those very individuals who had chosen to join the Organization held up to the


ridicule spelled out in the hoax letter.

APA has in all respects complied to the extent required by law with the Plaintiff's notice to produce documents. Plaintiffs' motion is frivolous, irresponsible and demonstrates a woeful ignorance of the actual circumstances surrounding the employment of the individual Plaintiffs.


Martin C. Seham

Dated: New York, New York
February 13, 1974

Sworn to before me this 13
day of February, 1974.


Notary Public

A
P ALLIED PILOTS ASSOCIATION

A GATEWAY PLAZA, 2621 AVENUE "E" EAST, SUITE 203 • ARLINGTON, TEXAS 76010 • PHONE: 817-261-0261



May 21, 1971

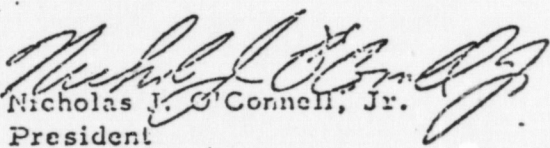
OPEN LETTER TO CAPTAIN BERNARD TEXTOR AND ALL TCA PILOTS

Gentlemen:

This is in response to your telegram requesting the Allied Pilots Association to arbitrate the American Airlines pilots seniority list. The Board of Directors of the Allied Pilots Association had a meeting on May 19, 1971. The attitude of the American pilots as reflected by the Board is clearly and plainly set forth in the attached resolutions.

It is again suggested that you cease any and every attempt and effort to violate our collective bargaining agreements. Your efforts and the efforts of all other former TCA pilots could more constructively be directed by joining our organization and working with all of the other American pilots on an equal basis to improve our professional stature. However, we will continue our purpose to that end, with or without your cooperation.

Very truly yours,


Nicholas J. O'Connell, Jr.
President

Concurred in unanimously by the Board of Directors:

W. H. Barry	W. M. Culbertson
R. H. Malone	R. J. Utz
J. R. Hundemer	C. B. Dixon
W. A. Cairns	G. D. Penrod
J. P. Nusloch	J. B. Syrett
J. R. Lyons	R. L. Macdonald
W. E. Prather	F. R. Vogel
F. G. Johnson	T. V. Keohane
L. E. Hughes	D. H. Pace
W. T. Reiners	R. F. Hanna
W. K. Guessford	

cc: All APA members

EXHIBIT "D"

WHEREAS the pilots in the employ of American Airlines, through their collective bargaining agent, the Allied Pilots Association, have expended great time and effort, energy and expense in negotiating superior sick leave provisions, disability provisions, and loss of license provisions with American Airlines, and

WHEREAS the acceptance of these superior collective bargaining provisions were taken in lieu of other benefits possibly attainable in our collective bargaining agreement, and

WHEREAS the cost factor to the Company in determining these benefits could be determined on the basis of the Company's experience through its preventive medical program, and

WHEREAS it appears that additional pilots will be on the pilot payroll where the Company has not had an opportunity to make a physical evaluation prior to their becoming American pilots, and

WHEREAS in pursuing its preventive medical program and insuring the professional physical longevity of our pilot group, new-hire pilot employees have undergone rigid medical examinations, including but not limited to electroencephalograms,

NOW THEREFORE, BE IT RESOLVED that American Airlines be advised that the Association insists that the Company's medical program be rigidly enforced without discrimination among all pilots in the employ of American Airlines.

BE IT FURTHER RESOLVED that these physical examinations be given without discrimination. ✓

WHEREAS, through the years American Airlines has maintained rigid professional standards of all pilots in its employ, and

WHEREAS, adherence to these standards has permitted the American pilot group to maintain the most rigid professional standards, equal to or superior to any other pilot group in the world, and

WHEREAS, it appears there is a danger that such professional standards could be put in jeopardy by the admission of pilots not originally hired or screened by American Airlines,

NOW THEREFORE, BE IT RESOLVED that the Allied Pilots Association, through its President, advise American Airlines that it will not countenance in any degree any diminution of the professional standards that the American Airlines pilots have maintained through Company direction and co-operation.

BE IT FURTHER RESOLVED that the standards are to be maintained without discrimination to any pilot in the Company's employ. ✓

* * *

WHEREAS the former TCA pilots who are non-members of the Allied Pilots Association have remained so in their selfish insistence to upset our basic seniority system

BE IT RESOLVED that the names of all non-members of the APA be listed in large letters permanently on each APA bulletin board at each domicile.

BE IT FURTHER RESOLVED that this list be brought to the attention of all members of the Association for their information, to enable them to extend all professional and social courtesies or lack thereof to these non-members. ✓

* * *

BE IT RESOLVED that any application for PMA membership from any non-member of the Allied Pilots Association shall be first approved by the APA Board of Directors.

WHEREAS the Allied Pilots Association is the certificated collective bargaining agent of all pilots in the employ of American Airlines, and

WHEREAS the pilot complement of American Airlines was formed on the basis of date of hire of all pilots, and

WHEREAS, since the birth of the Company, all pilots have assumed their position on our seniority list on the basis of their date of hire, and

WHEREAS the substantive provisions of the seniority section have remained unchanged since the birth of the Company, and

WHEREAS the Association in good faith and in an effort to be fair and equitable all concerned has negotiated an agreement with American Airlines providing that date of hire shall be the basis upon which pilots formerly with Trans-Caribbean Airways would be welcomed into the American Airlines seniority group, and

WHEREAS certain dissident TCA pilots have and continue to attempt to upset and change the provisions of our basic seniority rules to their selfish advantage, and

WHEREAS the date of hire concept forms the root and foundation of our members' opportunities, responsibilities and advantages through their airline professional careers, and

WHEREAS any attempt to alter, amend or change in any way our basic seniority system would effectively nullify each and every provision of our various collective bargaining agreements,

THEREFORE, BE IT RESOLVED that the President of the Allied Pilots Association is authorized to take any and all action necessary, including but not limited to promulgation of a strike ballot to all members of the Allied Pilots Association authorizing a work stoppage to protect and insure the sanctity of our seniority system.

BE IT FURTHER RESOLVED that any and all parties be advised of the provisions of this resolution and its solemn intent and purpose.

368a
EXHIBIT "B" - ANNEXED TO AFFIDAVIT OF NICHOLAS J. O'CONNELL
ALLIED PILOTS ASSOCIATION

A GATEWAY PLAZA, 2531 AVENUE "H" EAST, SUITE 208 • ARLINGTON, TEXAS 76010 • PHONE: 817-264-2161



May 21, 1971

To: All Members
Allied Pilots Association

Subject: A. A. PURCHASE OF T. C. A.

Gentlemen:

(Fellows, let's talk a little cracker barrel philosophy.) There once was a time when a fellow could make a decision to go to work for an employer and, knowing the ground rule would accept them in doing his job. As the years went by, he would enjoy a rewarding career, secure in the thought that everybody in the same position was operating by the same ground rules and had the same opportunities. We don't have to look very far to know that this system works. American Airlines was founded on this principle. Everybody who came to work for AA did so because he wanted to. He also knew that if he did his work properly, everything else being equal, he would enjoy the fruits of his labor. This concept is not peculiar to pilots -- just take a look around anywhere in the Company ask any agent if he does not get his raises on the basis of longevity. The mechanic's yearly rate increase depends on his years of service. Among the non-organized people, longevity and experience are important considerations to promotion. Everybody takes his vacation based on years of service. Everybody builds up sick leave on the basis of years of service. Everybody earns his pension based upon length of service. Even in our contract you will notice that disability retirement is earned by years of service. The simple point is that everything you have and hope to have with our Company is based on your length of service.

Now, everybody who came to work with American Airlines in the last 30 years did so because he wanted to. Nobody required the Company's 39,000 employees to accept employment here. We know that thousands of our pilots, based upon their education, professional experience, and military experience could have gone to work with any airline in the business. But, knowing the ground rules, and accepting them, and in competition with thousands of other pilots who wanted the job, they were chosen and accepted employment with American. You and I both know it was the best decision we ever made in our lives.

Now, for the first time in our history, we have pilot employees who did not choose to come to work with American Airlines, or who did not meet AA pilot employment qualifications. These pilots have not contributed one cent of their talent, a nickel of their time, or a dime of their effort to build this Company to its status of eminence in the airline industry.

If you look to the bottom of the well, any company is made up of people -- managers, supervisors, mechanics, cleaners, you name it. If all companies operate under the same general rules, all else being equal, in this industry the company that succeeds is going to do so because of its people. By the turn of the coin, if a company does not succeed, the people within that company have got to take a very great portion of the blame.

Now it just so happens that American Airlines bought a company that was, in reality, bankrupt. In fact, they had to take the dollars created by the American employees' efforts to keep the bankrupt company going until the purchase was OK'd by the Civil Aeronautics Board. If anybody told a banker that this was a merger, he would fall off his swivel chair laughing.

Now then, the government, in what they consider the public interest has, through the law, said that employees who work for acquired companies, even bankrupt ones, are entitled to some employment protection. There is nothing wrong with that. We do not understand, however, the logic that gives protection to people who work for the bankrupt company and not to the other. You may recall the Studebaker Corporation and the Kaiser automobile. Don't recall the government opening the bank vaults to have General Motors and Chrysler take care of those employees. Now it is true that when the government let American Airlines have these routes, in return they said, "You have to do something for these people. There is nothing wrong with that, either. But you all will remember when AA was the only carrier on the Southern Transcon route between Dallas and the west coast. The CAB has given these routes to practically everybody in the business and set us back for seven years. Don't recall the government ever suggesting that our people were entitled to any help.

Now, your elected representatives, attempting to be fair and square and wanting to welcome these outsiders in as a peaceful part of our family and to be assimilated, agreed with the Company that these pilots would sit down at the Company dinner table and take their cut of beef on the same basis that our oldest brothers did in years gone by, and as our youngest family members do. Now, would you believe these boys are not satisfied with their cut of beef. They want the whole cow, and intend to rearrange the groceries. Funny thing is, they have convinced some government people, who don't know anything about our Company family, that we have a domestic problem. Now, we know we don't have a problem and never had a problem. The problem is with the ingrates we have tried to help. (We don't mind playing ball, but we resent having the bat shoved up our

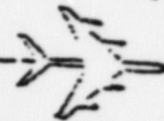
I know that each and every one of our members will lay it on the line to maintain our seniority system. To be blunt, the TCA boys should either get in line or get the hell out. If they are not big enough to play the game according to the rules, we don't want them. If our consideration and efforts have been interpreted as weakness, they have made one hell of a mistake.

Very truly yours,
FOR THE BOARD OF DIRECTORS


Nicholas J. O'Connell, Jr.
President

A
P ALLIED PILOTS ASSOCIATION

A GATEWAY PLAZA, 2611 AVENUE "E" EAST, SUITE 208 - ARLINGTON, TEXAS 76010 - PHONE: 817-261-0261



August 4, 1971

TO: ALL MEMBERS - NEW YORK DOMICILE

SUBJECT: NEW YORK DOMICILE MEETING MINUTES, July 29, 1971

1900 hours at Sheraton LaGuardia Hotel. Meeting was called to order at 1919 hours by Chairman Cairns and Vice Chairman Nusloch. Mr. Ed McGinn, Director/Flight Manning did not attend. A last minute change prevented Mr. Martin Seham from attending also. Several items of interest were covered prior to the arrival of guests.

1. Petitions denied at Federal Appeal Court, Second Circuit on July 23, 1971. Next step to Supreme Court; Writ of Certiorari being prepared.
2. Sick list covered.
3. New committee to be formed to encourage TCA pilots to join APA. Please volunteer. ✓
4. APA will tighten up on delinquent dues. If Ray Fry is not paid up by August 13th, he will be expelled. Perhaps a phone call from his friends could prevent this.
5. Illegally parked cars in employee lots will be towed away. Please adhere to prescribed rules, including sticker in view on visor of dashboard.
6. New grievance procedure to be instituted at New York. Check bulletin board.
7. Some changes in the August allocations. Be sure to verify your schedule.

At 1950 hours, President N. J. O'Connell and Secretary-Treasurer William Culbertson arrived.

8. Contract openers coming up soon. Please drop any comments or submissions in Cairns or Nusloch mail boxes.
9. R. Bernasconi moved that the minutes of the last meeting be accepted. Seconded by A. Price. Passed.

Chairman Cairns then introduced President N. J. O'Connell and Secretary-Treasurer William Culbertson and turned the floor over to Captain O'Connell. Captain O'Connell's remarks were as follows:

1. APA requested that MAC bids be re-posted. Company agreed and then added another aircraft requiring more personnel, so bids were enlarged. AAL and APA negotiating rules for the last several days. Anyone with qualifications will be able to move freely from international to domestic. Details to follow.
2. MAC bidder will have restrictions; suggest that you await bulletin. Crew schedulers are in short supply. Time is not being posted daily, so keep your own records accurately so as to stay legal and have records available for pay verification as your pay will be subject to errors also.

3 //22/7

EXHIBIT "F"

1. TCA/APA problems: Pursuing problem in court and evaluating position to take in any arbitration proceedings. Various alternatives are possible. Twenty-one former TCA members have joined APA, but we need all the conversions we can get. Request the names of any TCA pilots wearing uniforms not properly signifying their American Airlines status so that this can be corrected. Keep your month-to-month status (since the merger) in case such records might be needed in arbitration case. We feel at this time that the TCA pilots are presently persona non grata. Enough said.

It is felt that the APA lawyers are extremely capable in this field and well able to represent the Association in the proceedings. TCA pilots seem to feel they have nothing to lose in arbitration and this is not so. The arbitrator would judge the arguments presented and not past agreements, and the TCA pilots could come out with less than they have now. Be sure to mention this to the TCA pilots.

4. Furlough protection: Captain O'Connell and the entire APA philosophy is that what benefits the junior men eventually gets to the senior men; so, APA does mean to support the junior men. President O'Connell discussed with Mr. Warde the present situation. Quite simply, AAL must make money; economize, a reduction in force, building up business, all these things being considered. A reduction in hours does not necessarily mean much as an economy gesture. However, many other items have been discussed in order to give AAL working capital; such things as pilot payroll loans to AAL at interest to be repaid, elimination of meal expenses for a period of months, doubling up on hotel rooms, use of hotels closer to airports to minimize transportation costs. But, there are many considerations involved in these ideas. Mr. Warde stated that no furlough plans are firm at this time and that there is some hope that it can be avoided.
5. Freight business has gone all to hell. San Juan is doing well; Trans-Con 747 very poor. Some concessions in the working agreement may be asked of the Board of Directors. APA hopes to get across to American Airlines not to bust the contract without going through the proper channels. At least ask first. There is a junior pilot group working to set up a program to sell American Airlines and to help AAL, in turn helping ourselves. August projection is 59,000 hours; November projection is 55,000 hours. This could mean surplus pilots. We must increase the business.
6. Motion by Erik Vettergren, seconded by R. Zielke.

WHEREAS (1) AAL is losing money at a greater rate than last year (2) AAL Board of Directors has voted to omit the regular quarterly dividends, the first such omission since 1950, (3) President Spater has ordered a work force reduction, (4) a reduction in schedules for October has been announced, (5) an even greater reduction in all market schedules is being actively considered, (6) in a period of economic distress in flight pilot manning, ATPC training has been scheduled for completion prior to October 1, and (7) all general information, economic concern and the climate promoted by AAL announcements to its pilots is nearly identical to that of last year at this time,

WHEREAS, the facts presented indicate a potential pilot force reduction of APA members prior to the scheduled Board of Directors meeting in October,

WHEREAS, the additional furlough of even one APA member at this time would have a devastating effect on his career advancement for the next thirty years, if

WHEREAS, alternate plans and/or solutions to the stated problems are being actively considered by an appointed national APA committee.

BE IT RESOLVED that when the national committee completes its proposals, the New York domicile members of the Board of Directors of APA be under mandate to request that the Board of Directors meet in emergency session to consider all committee proposals for presentation to American Airlines.

Motion carried unanimously.

7. Motion submitted by E. Vettergren, seconded by Herb Rinehart.

WHEREAS, the seniority list of American Airlines pilots is under dispute as well as governmental investigation,

WHEREAS, most former TCA pilots refuse to accept a date-of-hire basis for seniority placement,

WHEREAS, all former TCA pilots who steadfastly refuse to accept date-of-hire placement on the AAL seniority pilot list have less longevity of service with American Airlines than any original American pilot,

BE IT RESOLVED that the New York domicile members of the Board of Directors direct the legal staff to determine the legality of American Airlines to furlough a pilot when the pilot seniority list has not been fully determined.

BE IT FURTHER RESOLVED that as long as the date-of-hire seniority list is under dispute and former TCA pilots refuse to accept same that longevity of service for AAL only be the sole basis of seniority and any furlough be based on this concept, providing necessary compensations according to the Railway-Labor Act.

Motion carried. One abstention.

8. Motion submitted by E. Vettergren, seconded by R. T. Guba. After discussion, E. Vettergren requested withdrawal and seconder refused withdrawal without vote. Motion to table by R. Bernasconi. Voted and carried. K. Korshin submitted motion seconded by R. Bernasconi.

BE IT RESOLVED that the New York domicile direct its representatives to take action at the Board of Directors meeting to protect APA members from a furlough while at the same time not jeopardizing the re-call of those APA members already furloughed.

BE IT FURTHER RESOLVED that any notice of a furlough be a mandate for a domicile meeting within 72 hours.

Motion carried. One abstention.

9. Captain Depol introduced question of flying in New York as opposed to Los Angeles. President O'Connell will attempt to provide as much notice as possible of impending furlough. Will also try to retain pass privileges so as to be able to job search. Talk to Credit Union if you have debts so as to work out satisfactory financial arrangements. They are willing, but you must bring your situation to them first.

EXHIBIT "F" - ANNEXED TO AFFIDAVIT OF NICHOLAS J. O'CONNELL

10. President O'Connell discussed negotiations with AAL regarding split sequences. K. Korshin introduced motion concerning cabin/crew inspired emergency evacuation. Seconded by R. Bernasconi, motion carried unanimously.
11. Captain Cairns discussed (1) the casual and careless distribution of pilot pay checks and (2) unacceptable practice of removing low JEPCO's from the first officer.
12. The New York domicile wishes to thank Jack Kenny for taking the minutes of the meeting. After thanking the guest speakers, the business meeting was adjourned by Captain Cairns at 0103 EDT.

/s/ W. A. Cairns

WAC/cl

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----x
NEIL P. CROWLEY and LOUIS F.
AMATUCCI,

72 Civ. 281

Plaintiffs,

:
:
: RESPONSE OF DEFENDANT
: ALLIED PILOTS ASSOCIATION
: TO PLAINTIFFS' NOTICE OF
: REQUEST FOR PRODUCTION OF
: DOCUMENTS

-against-

AMERICAN AIRLINES and ALLIED PILOTS :
ASSOCIATION,

:
Defendants.
-----x

Defendant, Allied Pilots Association, hereby answers
with respect to plaintiffs' request to produce in the above-
entitled action:

1. With respect to the request in paragraph "1",
that the inspection will be permitted as requested.
2. With respect to the request in paragraph "2",
that the inspection will be permitted as requested.
3. With respect to the request in paragraph "3",
that the inspection will be permitted as requested.
4. With respect to the request in paragraph "4",
that the inspection will be permitted as requested.
5. With respect to the request in paragraph "5",
that the inspection will be permitted as requested.
6. With respect to the request in paragraph "6",
that inspection will be granted of any and all correspondence,
reports, writings, and memoranda of any nature whatsoever,
including newsletters which relate to the training by American
Airlines of former Transcaribbean Airline personnel only if
such items relate to training by American Airlines of former

EXHIBIT 'G'

Transcaribbean Airline personnel in general and not if such items refer to specific individuals (other than the plaintiffs), and also not if such items refer to training for all American Airlines personnel in general.

7. With respect to the request in paragraph "7", that inspection will be granted of any and all records, memoranda, correspondence, reports, newsletters and minutes of meetings which relate to treatment to be afforded Transcaribbean Airline flight personnel by Allied Pilots Association members only if such items relate to treatment to be afforded Transcaribbean Airline flight personnel in general by Allied Pilots Association members and not if such items refer to specific former individuals (other than the plaintiffs). The word "treatment" as used in plaintiffs' request to produce is deemed to not include irrelevant mention of the American Airline-Transcaribbean merger proceedings ongoing at that time.

8. With respect to the request in paragraph "8", that inspection will be permitted only as to minutes and other memoranda relating to the meetings of Allied Pilots Association's Buffalo, New York and New York, New York Domiciles for the year 1971 which relate to training and treatment to be afforded the plaintiffs and other former TCA flight personnel in general by Allied Pilots Association members.

9. With respect to the request in paragraph "9", that the inspection will be permitted as requested.

10. With respect to the request in paragraph "10", that the inspection will be permitted as requested.

11. With respect to the request in paragraph "11", that inspection will be permitted only as to records, transcripts, tape recordings or other memoranda which relate to any proceedings wherein plaintiffs' rights under the agreement between Allied Pilots Association and American Airlines were under consideration which were prepared by Allied Pilots Association representatives or by independent court reporting services.

DATED: New York, New York
January 10, 1974

SURREY, KARASIK, MORSE and SEHAM
Attorneys for Defendant, Allied
Pilots Association
Office and P.O. Address
500 Fifth Avenue
New York, New York 10036
(212) 239-7200

